



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

March 5, 2018

Memorandum for: Deputy Commissioner, Trials

Re: **Lieutenant Paul McMahon**
Tax Registry No. 899574
50 Precinct
Disciplinary Case No. 2015-14841

The above named member of the service appeared before Assistant Deputy Commissioner Nancy R. Ryan on January 25 and May 18, 2017, and was charged with the following:

DISCIPLINARY CASE NO. 2015-14841

1. Said Lieutenant Paul McMahon, while on duty and assigned to the 50th Precinct, on or about April 14, 2015, at approximately 2131 hours, at Mosholu Avenue and Broadway, Bronx County, did engage in conduct prejudicial to the order, efficiency, or discipline of the New York City Police Department, in that he arrested Ms. Nicole Sanchez without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

2. Said Lieutenant Paul McMahon, while on duty and assigned to the 50th Precinct, on or about April 14, 2015, at approximately 2131 hours, at Mosholu Avenue and Broadway, Bronx County, did engage in conduct prejudicial to the order, efficiency, or discipline of the New York City Police Department, in that he arrested Person 1 without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

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3. Said Lieutenant Paul McMahon, while on duty and assigned to the 50th Precinct, on or about April 14, 2015, at approximately 2200 hours, at [REDACTED] [REDACTED] did engage in conduct prejudicial to the order, efficiency, or discipline of the New York City Police Department, in that he entered said apartment without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT
PROHIBITED CONDUCT**

4. Said Lieutenant Paul McMahon, while on duty and assigned to the 50th Precinct, on or about April 14, 2015, at approximately 2200 hours, [REDACTED] [REDACTED] did engage in conduct prejudicial to the order, efficiency, or discipline of the New York City Police Department, in that he searched said apartment without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

5. Said Lieutenant Paul McMahon, while on duty and assigned to the 50th Precinct, on or about April 14, 2015, at approximately 2200 hours, at [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that Lieutenant McMahon threatened to arrest Marta Sanchez without sufficient legal authority.

P.G. 208-1, Page 1, Paragraph 3

LAW OF ARREST

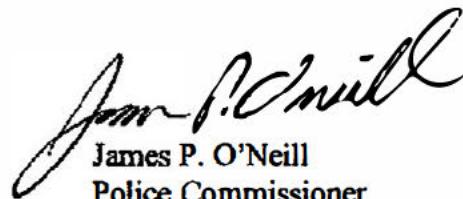
6. Said Lieutenant Paul McMahon, while on duty and assigned to the 50th Precinct, on or about April 14, 2015, at approximately 2200 hours, [REDACTED] [REDACTED] abused his authority as a member of the New York City Police Department, in that Lieutenant McMahon threatened to arrest Minor A without sufficient legal authority.

P.G. 208-1, Page 1, Paragraph 3

LAW OF ARREST

In a Memorandum dated July 11, 2017, Assistant Deputy Commissioner Nancy R. Ryan found Lieutenant Paul McMahon Guilty of Specification Nos. 1 and 2, and Not Guilty of Specification Nos. 3, 4, 5, and 6 in Disciplinary Case No. 2015-14841. Having read the Memorandum and analyzed the facts of this matter, I approve the findings but disapprove the penalty for Lieutenant McMahon.

With consideration of the totality of circumstances, I deem that a lesser penalty is warranted. Therefore, Lieutenant McMahon is to forfeit four (4) vacation days, as a disciplinary penalty.



James P. O'Neill
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

July 11, 2017

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Paul McMahon
Tax Registry No. 899574
50 Precinct
Disciplinary Case No. 2015-14841

Charges and Specifications:

1. Said Lieutenant Paul McMahon, while on duty and assigned to the 50th Precinct, on or about April 14, 2015, at approximately 2131 hours, at Mosholu Avenue and Broadway, Bronx County, did engage in conduct prejudicial to the order, efficiency, or discipline of the New York City Police Department, in that he arrested Ms. Nicole Sanchez without sufficient legal authority.

P.G. 203 10, Page 1, Paragraph 5 - PUBLIC CONTACT- PROHIBITED CONDUCT

2. Said Lieutenant Paul McMahon, while on duty and assigned to the 50th Precinct, on or about April 14, 2015, at approximately 2131 hours, at Mosholu Avenue and Broadway, Bronx County, did engage in conduct prejudicial to the order, efficiency, or discipline of the New York City Police Department, in that he arrested Person 1 without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT

3. Said Lieutenant Paul McMahon, while on duty and assigned to the 50th Precinct, on or about April 14, 2015, at approximately 2200 hours, at [REDACTED] [REDACTED] did engage in conduct prejudicial to the order, efficiency, or discipline of the New York City Police Department, in that he entered said apartment without sufficient legal authority.

P.G. 203 10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT

4. Said Lieutenant Paul McMahon, while on duty and assigned to the 50th Precinct, on or about April 14, 2015, at approximately 2200 hours, [REDACTED] [REDACTED] did engage in conduct prejudicial to the order, efficiency, or discipline of the New York City Police Department, in that he searched said apartment without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT

5. Said Lieutenant Paul McMahon, while on duty and assigned to the 50th Precinct, on or about April 14, 2015, at approximately 2200 hours, at [REDACTED] abused his authority as a member of the New York City Police Department, in that Lieutenant McMahon threatened to arrest Marta Sanchez without sufficient legal authority.

P.G. 208-1, Page 1, Paragraph 3 - LAW OF ARREST

6. Said Lieutenant Paul McMahon, while on duty and assigned to the 50th Precinct, on or about April 14, 2015, at approximately 2200 hours, at [REDACTED] abused his authority as a member of the New York City Police Department, in that Lieutenant McMahon threatened to arrest Minor A without sufficient legal authority.

P.G. 208-1, Page 1, Paragraph 3 - LAW OF ARREST

Appearances:

For CCRB APU: Jeannie Elie and Jonathan Fogel, Esqs.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

For the Respondent: Philip Karasyk, Esq.
Karasyk & Moschella, LLP
233 Broadway-Suite 2340
New York, NY 10279

Hearing Dates:

January 25 and May 18, 2017

Decision:

Guilty- Specifications 1 & 2
Not Guilty- Specification 3, 4, 5 & 6

Trial Commissioner:

ADCT Nancy R. Ryan

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 25 and May 18, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB called [REDACTED] Marta Sanchez, Minor A and Police Officer John Galbo as witnesses. Respondent called Police Officer Meribeth Alix as a witness and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of Specifications 1 and 2 and Not Guilty of Specifications 3, 4, 5 and 6.

FINDINGS AND ANALYSIS

This case arises out of Respondent's verifying three arrests following a vehicle stop and a subsequent warrantless search of the apartment one of the arrestees shared with his [REDACTED]. The following facts are undisputed. On April 14, 2015, at approximately 2130 hours, Police Officer John Galbo and his partner, Officer Dang, approached a SUV at the corner of Mosolu Avenue and Broadway in the Bronx. Inside the car was Person 1 in the driver's seat, Person 2 in the front passenger seat and [REDACTED], in the backseat. (Tr. 11-12) Galbo, who had approached the passenger side, had Person 2 step out of the vehicle and asked what was underneath his sweatshirt. When he indicated it was marijuana, Galbo confiscated it and then handcuffed him. Ultimately, Person 1 and [REDACTED] were asked to step out of the vehicle, placed in handcuffs and searched. No contraband was discovered on either individual. (Tr. 16-19, 124-27) Galbo requested that Respondent come to the location and verify the arrests, which he did. The SUV was driven back to the precinct and all three individuals were

transported in handcuffs and placed in holding cells. No contraband was recovered from the SUV, which was searched at the precinct. (Tr. 126-29, 178-79, 196)

As there was some confusion regarding Person 2's address, Respondent then opted to proceed to [REDACTED] accompanied by Galbo, Dang, and Officer Meribeth Alix¹, a Department certified Spanish translator, to confirm that Person 2 resided there. (Tr. 132, 141-42, 153-54, 179-82) At the residence, they spoke with [REDACTED] Marta Sanchez, and Minor A. It is controverted whether consent was duly obtained, but Ms. Sanchez signed a consent form (Respondent's Exhibit A)² and a search was conducted of Person 2's bedroom, in addition to, at minimum, bins located in the living room and kitchen cabinets. Respondent also entered Ms. Sanchez's bedroom at one point. (Tr. 58-59, 94-95, 213-14) Quantities of marijuana were recovered from the table at the front of the apartment and Montero's bedroom. (Res. Ex. B) Upon returning to the precinct and speaking with Person 2 further, Respondent authorized the voiding of Person 1 and [REDACTED]'s arrests. (Tr. 142-43, 191-92, 218)

At issue in this case is whether Respondent had sufficient legal authority to authorize the arrests of [REDACTED] and Person 1; whether he had consent to enter and effectuate a search of Marta Sanchez's apartment and whether he improperly threatened Marta Sanchez and Minor A with arrest. While Respondent maintains that he adhered to all relevant laws and Department procedures, Ms. Sanchez and her [REDACTED] assert their rights were violated.

¹ Respondent suggested a Sergeant Burns might also have accompanied them but he was not certain. Officer Alix did not recall if there was a sergeant with them. Marta Sanchez testified and Minor A confirmed that there were four male officers and one female at the apartment. (Tr. 52, 111, 165, 181)

² The consent form states: I [Martha Sanchez] do hereby authorize Officers from the New York City Police Department to conduct a complete search of my premise/vehicles/business or other locations as described: [REDACTED]. The Officers are authorized by me to take from my Premise, Vehicle, Business and/or other locations as described any letters, papers, materials, or other property, which they may desire. This written permission is given by me to the Officers VOLUNTARILY and without threats or promises of any kind."

[REDACTED] recounted that she was in an automobile with [REDACTED] Person 2, and his boss, traveling to her mother's house in Yonkers when they were pulled over. An officer asked Person 2 to roll down his window and proceeded to comment that it smelled like marijuana and ask whether they had "anything in the car." [REDACTED] responded, "I have nothing on me or in the car," as did Person 1. The officer asked Person 2 to step out of the vehicle and she heard him tell the officer he had "something" and saw him point to his front pocket. He was patted down, and the officer "grabbed something," and put cuffs on him. She did not know what the confiscated item was. (Tr. 14-18, 42)

After the driver was directed to exit the vehicle, Ms. [REDACTED] was then asked to do the same and her pockets and torso area were patted down. The officer did not recover any contraband from her person but she was placed in handcuffs and told to stand behind the car bumper. (Tr. 18-19, 42) She had never previously been arrested and felt uncomfortable. She believed they remained standing at the bumper for 30 minutes, which the officers explained was because the "car was under investigation." She recalled being told that they needed to go back to the precinct so "they can further investigate the vehicle." (Tr. 21-22)

At the precinct, she waited for a few hours in a cell, which she described as unsanitary, cold and uncomfortable. After forty minutes, she called an officer over and asked when they would be released and was told, "they're further investigating the car, once they're done, we'll be out and Person 2 ha[d] to speak to the lieutenant for us to be released." She estimated that she was released at 0200 hours the next morning without further explanation of why she had been placed under arrest. (Tr. 26-27)

On cross, Ms. [REDACTED] conceded that she had smoked marijuana with Person 2 about an hour before the vehicle stop. However, she denied being "buzzed" when the car was pulled

over and claimed to have no knowledge that Person 2 had pot on him when they got into the vehicle. She also denied any knowledge whatsoever of Person 2 selling marijuana and stated she was not aware of Person 2 smoking marijuana in Ms. Marta Sanchez's apartment, insisting "she would never allow that." She did not hear Person 2 specifically state, "it's my marijuana" during the vehicle stop, but noted that she was inside the vehicle when he stepped out and spoke with the officer. She was aware, though, that he did make that statement at the precinct. (Tr.31-40)

Ms. [REDACTED] filed a lawsuit in connection with her arrest and expects to receive \$30,000 in a pending settlement. (Tr. 28, 34, 41) Even with this resolution, she proceeded with this CCRB case because "what happened to us was really . . . unjust..completely just wrong and they should not have arrested me, nor my friend . . . nor . . . harassed [Ms. Marta Sanchez]. ." (Tr. 41)

Police Officer John Galbo, one of the officers who effectuated the vehicle stop, was also called as a witness by CCRB. He recalled stopping a double-parked SUV and observing the driver on his cell phone. As he was approaching the passenger's window, he saw "movement from the rear of the vehicle to the front of the vehicle," specifically, "passing of an object from the rear of the vehicle to the front."³ He then observed the front passenger "stuffing something under his sweatshirt." When asked about the size of the object that was purportedly passed, Galbo replied, "I don't recall..I can't really explain the size." As he got closer, he noticed a

"very strong odor of marijuana" and asked the front passenger to step out of the vehicle. Galbo then asked what was underneath his sweatshirt and he responded, "I have two QP's."⁴ Galbo

³ An excerpt from Galbo's July 7, 2015 CCRB interview was read into the record and revealed that he denied seeing movements on the part of the driver or backseat passenger. (Tr. 134-39)

⁴ Galbo explained that he understood "QP's" to mean quarter pounds of marijuana. (Tr. 150)

removed the marijuana from underneath his sweatshirt but explained, “at that point we couldn’t determine exactly who had the marijuana. So we decided to conduct an investigation....” The other two individuals were then asked to exit the vehicle, placed in handcuffs and searched, though no additional contraband was discovered. (Tr. 121-29)

Respondent then arrived at the scene and Galbo “explained to him the whole situation, that we couldn’t determine where the marijuana came from because it was passed and at one point it was in the car and no one had ownership of it . . .” Galbo testified that though he had not been able to discern what the item was as it was being passed, he determined it was the marijuana when Person 2 said that he had two QP’s. He also pointed out that Person 2 never said the marijuana was his; he only indicated it was under his sweatshirt. However, Galbo conceded on cross that Person 2 also never indicated he had received it from someone else. He further acquiesced that he “assum[ed]” but did not know definitively that the object allegedly being passed was marijuana. (Tr. 127-31) He later voided the criminal possession arrests of [REDACTED] and Person 1, with Respondent’s approval, hours later after Person 2 confirmed that the marijuana belonged to him. (Tr. 131-32, 139, 141-42).

Marta Sanchez and [REDACTED] Minor A, testified for CCRB regarding Respondent’s visit to her apartment following the vehicle stop.⁵ Ms. Sanchez recalled being home with Minor A, sitting together at the table, when police knocked and announced their presence. After she answered, one of the officers told her that her Person 2 had been arrested and was at the stationhouse and further stated in English, “I’m coming to look for something that he old me that had been left in your room.” Ms. Sanchez agreed that she understood “that little bit” of English. She contended that four male officers and one female then

⁵ Ms. Sanchez testified with the assistance of a Spanish interpreter.

proceeded inside her apartment, without being invited⁶, as she stood in the doorway. (Tr. 51-53, 62, 69-71) Two male officers went into Person 2's room and "looked for something, I don't know what they were looking for. They left. So then they gave me a paper for me to sign and to put the date. And seeing as I didn't understand them well, I gave it to the female police officer and for her to tell me to sign it and for her to put down the date." She was too upset to gauge how long the officers were in the room but did recall that his door was initially partly open. (Tr. 54-55, 59) She also remembered that Respondent directed the female officer to stay with her while they went in Person 2's room "because I was very nervous . . ." (Tr. 68, 80)

With respect to the form she signed, Ms. Sanchez testified that the female officer gave her the form without explaining it but told her that "the oldest officer" had "said for [Ms. Sanchez] to sign that paper and [if she did not sign, she] could be arrested along with my [Minor A]" (Tr. 55-57) On cross, she testified that "the only thing" the Spanish-speaking female officer told her was to sign and date the form and further insisted that she did not read the form to her. (Tr. 68, 73)

After she signed the form, the officers again went into her grandson's room and removed two shoeboxes from the room, which she thought might have contained sneakers, though she admitted she was not sure. They proceeded to looked underneath her table and around her plants, then moved to the kitchen, opening her cabinets before heading into her bedroom. (Tr. 57-59, 75) Ms. Sanchez testified that she has never smoked marijuana and did not allow her [REDACTED] to do so in the apartment because the smell makes her nauseous and sick. (Tr. 60)

⁶ At trial, she did not recall one of the officers asking, "Can you let me in?" but the APU prosecutor stipulated that at her CCRB interview, she recapped their conversation as follows: "[The officer] says, 'Well, he sent me here to find something in his room.' And I say, 'why?' 'Can you let me in?' And I say to him, 'but what for?' . . . Then I let him in but he didn't just search for something . . . he searched and rummaged through the whole house." (Tr. 62-66)

As to her proficiency with English, Ms. Sanchez testified on redirect that she speaks "a little bit" of English and understands "almost nothing." She agreed that Minor A speaks English but stated she did not ask her or the Spanish-speaking officer what the consent form said, noting Minor A "didn't see the paper." (Tr. 82, 86)

Minor A, [REDACTED] contradicted certain portions of Ms. Sanchez's testimony. Perhaps most notably, on cross-examination, Minor A confirmed that her [REDACTED] does understand English and further explained, "[s]he knows like certain words in English but is not fluent and the only thing she can do is understand English, but she replies in Spanish." (Tr. 104)

On the night in question, Minor A recalled being on her phone, not sitting at the table together as Marta Sanchez testified, when she heard an officer telling her grandmother that her "Person 2 had sent them to the house to pick up some belongings that he needed and that they

needed to get it." Some officers then proceeded into Person 2's room and another male officer, who she could not physically describe, remained near the kitchen with Ms. Marta Sanchez, telling her it was going to be fine and "everything would be okay." (Tr. 90-93) A female officer then echoed the same sentiment in Spanish. The officers then emerged from her brother's bedroom with two shoeboxes. (Tr. 94-95, 100-03)

After learning from her [REDACTED] that the officers "didn't show . . . a paper that said they're able to do this," she tried to contact her [REDACTED] by phone but claimed an Asian officer "didn't let me." She recalled that "the chief" gave the Spanish-speaking officer a piece of paper and that the officer then told her [Marta Sanchez] [REDACTED] to sign it or they would take them both into custody. Minor A asked, "Why would you do that? . . . There's no problem here . . . you guys came into our home starting problems." A male officer responded, "There's drugs here so we can

charge you both for that." Minor A agreed on cross that she told the officers that they weren't going to take her anywhere and pointed out that they did not have a warrant. (Tr. 95-97, 110-13)

Minor A read the consent form to herself and though she did not recall at trial what it said, she testified it was "different" than what the Spanish-speaking officer was telling her [Ms, Marta Sanchez]. Minor A then demanded that the officer stop speaking to her [REDACTED] Ms Marta Sanchez], but did not say anything to her [REDACTED] or the officers about the translation of the form being inaccurate. At that point, her [REDACTED] [Ms, Marta Sanchez] signed the form and the officers went through some bins in the living room and began to look around the rest of the apartment, including inside two closets. (Tr. 95-100, 103-12)

In contrast to the CCRB's civilian witnesses, Respondent testified that he adhered to Department protocol and procedure and took steps to ensure Ms. Sanchez understood what was happening on the evening in question. He recalled receiving a call from Galbo at 2130 hours, asking that he respond to the car stop location and verify arrests. (Tr. 177-78) When he arrived, he saw three individuals at the back bumper of an SUV. Respondent spoke with Galbo who advised him of "the circumstances of the arrest[s]," explaining "what he observed . . . [that] led him to place the three under arrest." On cross, he confirmed that Galbo had specified that the recovered marijuana had been retrieved from the front of Person 2's pants and that no contraband had been recovered from either Person 1 or [REDACTED] (Tr. 194-96)

At the stationhouse, Respondent learned that Person 2 had given conflicting addresses—one in [REDACTED] and one on [REDACTED] in [REDACTED] This "jarred [Respondent's] memory that I had information and intelligence regarding drug dealing that was going on in that building." He detailed, "There was an exchange of information between us and [REDACTED] . . . And I came to understand upon getting information about the building on [REDACTED] that there was a connection

with the same type of drug activity in [REDACTED]" Respondent decided to go to the [REDACTED] address to determine whether Person 2 resided there and recruited Officer Alix to accompany him along with Galbo and Dang after learning she was a certified Department translator. (Tr. 180-82, 201)

Respondent recounted knocking on the door and asking Ms. Sanchez if she knew Person 2. She asked, "[w]hat's wrong?" and Respondent replied, "Person 2 got in a little trouble tonight . . . and I would like to speak with you about that." Explaining that he did not want to discuss personal business in the hallway, he asked if he could come inside and Ms. Sanchez responded, "Yes," put her hand out and stepped to the side. (Tr. 182-83)

As soon as he stepped into the apartment, he immediately observed a small clear Ziploc bag containing marijuana in plain view on a table to his left. He quickly pointed it out to Ms. Sanchez, who seemed "confused" at first but ultimately "acknowledged" it. He proceeded to ask whether Person 2 resided with her and then explained why he was under arrest. Ms. Sanchez was a "little upset" and said something to the effect of "Oh, he had been troubled before." Respondent then asked if anyone else was inside the apartment. Ms. Sanchez pointed to Person 2 bedroom, where the door was a quarter of the way ajar, and indicated Minor A was in there. At Respondent's request, Ms. Sanchez pushed the door open and the smell of marijuana, which Respondent had noticed upon entering the apartment, became much more pungent. (Tr. 183-88, 204-07) Respondent denied seeing Minor Ar on the phone or hearing anyone, at any point, directing her to get off her phone. He also did not hear her indicate at any point that she wanted to call her mother. (Tr. 207-08) With the bedroom door open, Respondent was able to see a glass jar containing a "clearly visible" quantity of marijuana. (Tr. 187)

Respondent then had Ms. Sanchez sit to calm down and explained to her that "it was obvious to me that Person 2 is keeping things in your apartment." He further articulated, slowly

and deliberately, “that’s a problem, this is your apartment, and you’re responsible,” but reassured her, “you have no trouble. I don’t believe you’re involved in this in any way, but we want to get out of here what’s here. . . . If you consent to it, I would like to get whatever contraband and anything that Person 2 is keeping in his room and get it out of here.” (Tr. 189-90) On cross-examination, he acknowledged asking if the apartment was Section 8 housing but denied warning her that she could lose Section 8 status if her grandson was selling drugs, explaining that anything he said about Section 8 being adversely impacted was “in regards toward her [REDACTED] and not to her.” (Tr. 205 06) He noted that Officer Alix was translating “during this whole process” “as necessary,” but he felt that Ms. Sanchez understood him when he spoke. Respondent recalled that Ms. Sanchez was “worried about herself” and he reiterated that she was not in trouble. (Tr. 189-90, 211)

Respondent then directed Alix to read and translate the consent to search form.⁷ He stated that he also explained it to Ms. Sanchez in English.⁸ He noted that at this point she was “very cooperative...and much calmer and relaxed.” After the form was signed, the officers proceeded into Person 2 ’s room and recovered the marijuana. (Tr. 190-91, 208) He acknowledged that officers also went into Ms. Sanchez’s bedroom, looked in bins in the living room and opened cabinets. It was Respondent’s belief that Ms. Sanchez understood that the consent form did not limit the officers to Person2’s bedroom. Respondent contended that at no point during the forty-five minutes he spent at the apartment did he threaten Ms. Sanchez or Minor A with

⁷ He testified that he did not have a Spanish consent form with him that evening or “otherwise, I obviously would have brought a Spanish one.” (Tr. 201-02)

⁸ Respondent did not recall telling a CCRB investigator on June 5, 2015 that he stated, “If you agree, I would like to have you sign consent so that we can recover what’s in here that I’ve seen.” He acknowledged, “I imagine I did [say that], if that’s what’s recorded there.” but believed the statement was part of a “broader conversation.” (Tr. 209-10)

arrest if she did not sign the form. On cross, he agreed that “freezing” the location to get a warrant had “crossed [his] mind” but he opted not to do so. (Tr. 213-17)

After returning to the precinct, Respondent had a conversation with Person 2, where he took full responsibility and ownership of the marijuana recovered during the vehicle stop and in the apartment. This was also acknowledged in writing. Respondent explained that the conversation satisfied him that Person 2 was responsible for the marijuana and, as a result, he voided the arrests of Person 1 and [REDACTED] (Tr. 191-92, 217-18)

Police Officer Meribeth Alix testified on Respondent’s behalf regarding her communications with Ms. Sanchez, corroborating much of Respondent’s account. On the night in question, Respondent asked if she would accompany him to a location to translate, as he believed there was an elderly woman residing there who might only speak Spanish. Upon their arrival, Ms. Sanchez answered the door and Respondent explained in English that Person 2 was arrested and asked if they could come inside so as not to have this personal information overheard by neighbors. Alix proceeded to translate his words and Ms. Sanchez nodded her head, said “yes, yes” and waved her hands for them to come inside. She recalled that as soon as they walked in, Respondent pointed out a bag of marijuana on the living room table. He then asked Ms. Sanchez whether Person 2 resided with her and began “explaining the situation,” as Alix translated. She recalled that Ms. Sanchez started crying and they had her sit to calm down. Alix testified that no threats of arrest were made and recalled that Respondent tried to convey to Ms. Sanchez that Person 2’s arrest “wasn’t serious.” (Tr. 154-58, 163-69)

She remembered at that point seeing a shadow in a bedroom and Respondent pushing the door, which had been ajar, open. A teenage girl emerged and came to sit near Ms. Sanchez at the table. As the door opened, Alix smelled “a stronger odor of marijuana.” (Tr. 158, 169-70)

Respondent then asked Alix to read a consent form to Ms. Sanchez, who by this point had calmed down, and ask if she would sign it. Alix testified that she read it line by line in English, then Spanish in its entirety. She added no commentary beyond the words on the form and acquiesced on cross that she did not specifically advise that Ms. Sanchez would have “no legal consequences” and would not be arrested if she did not sign but again confirmed that no threat of arrest was ever made. According to Alix, Minor A made no comments and Ms. Sanchez nodded her head in agreement before signing the form. (Tr. 160-62, 172-74)

Specifications 1 & 2- Unlawful Arrests

Having considered the applicable law and the relevant testimony before the tribunal, I find there was no legal justification for arresting [REDACTED] and Person 1. For purposes of the Fourth Amendment, a lawful arrest requires probable cause. See *U.S. v. Diaz*, 122 F.Supp.3d 165 (S.D.N.Y. 2015), citing, *Virginia v. Moore*, 553 U.S. 164, 177 (2008). Probable cause “exists when the officers have knowledge of, or reasonably trustworthy information as to, facts and circumstances that are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed by the person to be arrested.” *Zellner v. Summerlin*, 494 F.3d 344, 368 (2d Cir. 2007). Probable cause “is a fluid concept,” *Florida v. Harris*, 133 S. Ct. 1050, 1056 (2013), which is not “readily, or even usefully, reduced to a neat set of legal rules.” *U.S. v. Falso*, 544 F.3d 110, 117 (2d Cir. 2008) It is well established, however, that “[p]robable cause is to be assessed on an objective basis.” *Zellner*, 494 F.3d at 369. Put simply, an arrest “is not unlawful so long as the officer has knowledge of, or reasonably trustworthy information as to, facts and circumstances sufficient to provide probable cause to believe that the person arrested has committed any crime.” *Id.* Probable cause must also be

particularized as to each person arrested. See *U.S. v. Brock*, 2016 US Dist. LEXIS 90990 at *9 (W.D.N.Y. 2016), citing, *Ybarra v. Illinois*, 444 U.S. 85 (1979) (“a seizure of a person must be supported by probable cause particularized with respect to that person. This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another . . . where the person may happen to be.”).

In the view of this tribunal, there was no “reasonably trustworthy information as to facts and circumstances” sufficient to provide particularized probable cause that either Person 1 or [REDACTED] had committed the crime of criminal possession. It is undisputed that no contraband was recovered from [REDACTED] or Person 1 during the vehicle stop nor from the vehicle itself.⁹ The confiscated marijuana was recovered exclusively from Person 2’s person and Officer Galbo testified that Person 2 readily acknowledged as he got out of the vehicle that he “had 2 QP’s [of marijuana].” (Tr. 125, 129) See *Lozada v. City of N.Y.*, 2013 U.S. Dist. LEXIS 105682 (E.D.N.Y. 2013) (“A defendant constructively possesses tangible property when he exercises dominion and control over the property by a sufficient level of control over the area in which the contraband is found or over the person from whom the contraband is seized.’ *People v. Manini*, 79 N.Y.2d 561 (1992) . . . In the specific context of a car, the location of the contraband within the car in relation to the defendant is relevant to determining control . . . ‘Mere presence at the location of contraband does not establish possession.’” *U.S. v. Rodriguez*, 392 F.3d 539 (2d Cir. 2004)).

⁹ Moreover, even if marijuana had been recovered from inside the vehicle and not from the person of one of the individuals inside, no statutory presumption of possession by all passengers would be applicable here. See *People v. Gabidon*, 40 A.D.3d 776 (2d Dep’t 2007) (“[The presumption] only applies to the presence of a controlled substance in an automobile, as defined in Penal Law 220.00(5), which specifically excludes marijuana from the definition of controlled substance.”).

The tribunal is confounded as to why Pers. 2's statement, coupled with the confiscation of marijuana directly from his waist area, did not satisfy Galbo or Respondent, after he was briefed by Galbo at the scene, that Person 2 was the individual in possession of the marijuana. The only two factors articulated by Galbo, both at trial and to Respondent at the scene, as to why he opted to place all three individuals in the vehicle under arrest were the odor of marijuana emanating from the vehicle and his belief that he saw an "object" passed from the rear of the vehicle to the front as he approached. While it is well-settled law that the smell of marijuana emanating from a vehicle provides officers with probable cause to search the automobile (*People v. Chestnut*, 43 A.D.2d 260 (3d Dep't 1974), *aff'd*, 36 N.Y.2d 971 (1975)), it does not follow that the odor also provides probable cause to arrest everyone in the vehicle for possession. See *Brock*, 2016 U.S. Dist. LEXIS 90990 at *9. And though Galbo described seeing "movement" that he believed was "an object" being passed from the rear passenger¹⁰ to the front passenger, he in no way described seeing anything remotely akin to marijuana being handed off from the rear passenger to the front passenger. He stated he could not recall the size of the object and did not describe it in any other way. Further, he conceded that after recovering the marijuana from Person 2, he assumed, but did not know definitively, that the marijuana was the passed object. This vague description of moving or passing an object that the witness could not describe in any way cannot be deemed reasonably trustworthy information sufficient to establish probable cause to arrest Ms. [REDACTED] or marijuana possession and in no way implicates the driver, Person 1, who was also arrested.

¹⁰ According to the CCRB interview transcript read into the record, Galbo did not specifically reference any movement with respect to the back seat passenger, Ms. Sanchez, at his interview, and answered "no" when asked if he saw any movements on "their part," with respect to the driver and back passenger. (Tr. 138-39) This further undercuts the reliability of his imprecise description of the alleged "movement" at trial.

While I acknowledge that Galbo appeared to have acted in good faith and merely misunderstood or misapplied the law, Respondent, as a supervisor with several years of experience, is expected to know the law, particularly a central tenet such as probable cause, and apply it correctly. The arrests of [REDACTED] and Person I should not have been verified and resulted in their spending hours at the stationhouse. Accordingly, Respondent is found Guilty of Specifications 1 and 2.

Specifications 3 & 4- Entry and Search

As to the initial entry, I credit Respondent's testimony, wholly corroborated by Officer Alix, that he asked for permission to enter and that Marta Sanchez granted it by saying "yes" and gesturing with her hand. Though Ms. Sanchez testified at trial that Respondent and his subordinates came in without being invited as she stood in the doorway, that statement is entirely contradicted by her earlier statement to CCRB, stipulated to by the APU prosecutor at trial, where she recounted that Respondent asked "Can you let me in?" and she acknowledged, "I let him in." (Tr. 65-66) When confronted with this statement, which essentially confirms the accounts of Respondent and Alix, Ms. Sanchez simply stated she did not recall making it. Because the credible evidence indicates that Respondent entered with consent after seeking permission, he is found Not Guilty of the improper entry alleged in Specification 3.

Regarding the search of the apartment, the tribunal is also satisfied that consent was obtained. I note preliminarily that Ms. Sanchez seemed to be downplaying her ability to understand English, saying she understood "almost nothing." This was directly contradicted by Minor A who confirmed that Ms. Sanchez does understand English even if she speaks only a few words, a statement that lends credence to Respondent's testimony that he felt Ms. Sanchez was understanding him in English.

Irrespective of her actual proficiency with English, the fact is that Respondent sought out a Spanish-speaking officer to accompany him and translate. Officer Alix, a certified Department translator, testified in a very professional and straightforward manner about how she translated Respondent's words and then the consent form line by line prior to the officers entering Person 2's bedroom and confiscating the marijuana. According to Respondent, they did not have a longstanding working relationship at the time of the incident. She was not shown to have any motive to lie and proved to be a very credible witness. (Tr. 182)

On the other hand, Ms. Sanchez and Minor A provided more questionable narratives regarding the translations. Ms. Sanchez testified that Officer Alix did not explain the consent form and that the "only thing" she told her was to sign and date the form or she and Minor A would be arrested. When asked why she did not ask Minor A, who spoke English, to translate the form, she indicated Minor A did not see the consent form. (Tr. 56-57, 68, 72, 86) Ms. Minor A testified, however, that she did read the paper. She could not recall what it had said but still assuredly testified that it was "different" than what Alix told Ms. Sanchez. She acquiesced that she did not tell her [REDACTED] [Ms. Marta Sanchez] not to sign the form and did not make any comments about the purportedly incorrect translation.

These accounts, which are clearly inconsistent in some ways, raise more questions than they answer. It strains credulity that Officer Alix would not, as Ms. Sanchez claimed, even read the consent form before asking Ms. Sanchez to sign or Respondent, after taking the step of bringing a Spanish speaking officer to the location, would not have her translate anything other than an order to sign a form. Though the APU prosecutor strongly implied that Respondent obtained consent by taking advantage of Ms. Sanchez's age, lack of education and English

proficiency, there is not one iota of actual evidence to support that argument.¹¹ Further, it also seems doubtful that Ms. Sanchez would not ask her English speaking granddaughter, Minor A, who was sitting at the same table, about the form if she truly did not understand it or that Minor A, if she truly believed Alix was misleading her vulnerable [REDACTED] would raise no objection about the translation and allow her [REDACTED] to sign.

After considering all the testimony on this point, the tribunal is satisfied that consent was properly obtained after Officer Alix ensured in Spanish that Ms. Sanchez understood what was happening and exactly what the consent form provided. As the consent form clearly authorizes the officers to do a complete search of the apartment, I am also unpersuaded by CCRB's argument that Ms. Sanchez did not understand that it authorized the officers to search the entire apartment. Accordingly, Respondent is found Not Guilty of Specification 4.

Specifications 5 & 6- Threats of Arrest

Finally, the tribunal finds that the CCRB has not met its burden of proof in establishing that Respondent threatened Ms. Sanchez and Minor A with arrest if she did not sign the consent form. Ms. Sanchez and Minor A maintain that he did just that; Respondent and Officer Alix testified that no threats were made at any point. The larger narrative simply does not fit with Respondent making such threats. It is undisputed that he, believing an elderly Spanish-speaking woman resided at the location, made sure to bring a female, Spanish-speaking officer along to translate. Ms. Sanchez herself testified that at one point he directed Officer Alix to remain with her because she was crying and that Respondent asked her at one point to check and make sure

¹¹ In making this finding, I note that I have considered the case law submitted by the APU prosecutor discussing police officers obtaining consent by creating coercive atmospheres. I do not find that there is any credible support in the record for the arguments that Respondent created a coercive atmosphere by bringing multiple uniformed officers with holstered firearms to the apartment or by acting confrontational with Ms. Sanchez. While the tribunal recognizes that uniformed officers unexpectedly arriving at a residence can certainly be jarring and stressful, if anything, the credible evidence indicates Respondent and Alix were the opposite of confrontational and attempted to reassure Ms. Sanchez that she was not in trouble.

that nothing in her room was “mess[ed] up” after the officers looked inside. Minor A testified that a male officer tried to tell her grandmother [Ms. Marta Sanchez] ‘that it was going to be fine, that they just needed to get the belongings and everything would be okay.’ (Tr. 93) Though she did not identify the officer who expressed that sentiment, it aligns entirely with Respondent’s testimony that he told Ms. Sanchez, “[y]ou have no trouble,” and let her know that he did not believe she was involved in any criminal activity. (Tr. 189-90)

The testimony of all witnesses, including those testifying for CCRB, indicates that Respondent tried to be as considerate of and empathetic toward Ms. Sanchez as possible under the circumstances. As such, it defies logic that he would, in the very same interaction, threaten her and Minor A with arrest if she did not sign a form. I credit Respondent’s assertion, credibly corroborated by Officer Alix, that no threats were made and find Respondent Not Guilty of Specifications 5 & 6.

PENALTY RECOMMENDATION

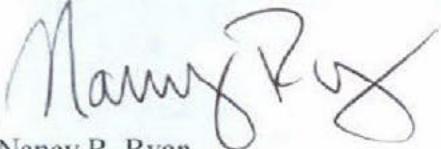
In order to determine an appropriate penalty, Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on April 30, 1991. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The CCRB has requested a penalty of thirty vacation days and one-year dismissal probation. (Tr. 243) That recommendation is far too harsh given the nature of the misconduct and the fact that Respondent was found Guilty of only two of the six charged specifications.

In a recent case, a sixteen-year lieutenant, with one prior adjudication, forfeited eight vacation days for participating in the arrest of a civilian without sufficient legal authority. *Disciplinary Case No. 2015-12960* (May 27, 2016). Much like in this case, the lieutenant, the

highest ranking officer on the scene, did not establish that there was probable cause for the arrest as he did not himself observe the arrestee commit a crime or articulate that that another officer provided him with specific, trustworthy information indicating that the arrestee had committed a crime. I find that the same penalty is fair and reasonable under the circumstances of this case. Though Respondent was involved in not one but two improper arrests in the instant matter and does also have one prior adjudication, the tribunal also takes into consideration his long and decorated career, which includes five Commendations, one Honorable Mention and a Combat Cross in addition to several other medals and consistently excellent performance evaluations. As such, it is the recommendation of this tribunal that Respondent forfeit eight (8) vacation days.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT PAUL MCMAHON
TAX REGISTRY NO. 899574
DISCIPLINARY CASE NO. 2015-14841

Respondent was appointed to the Department on April 30, 1991. On his last three annual performance evaluations, he received 5.0 overall ratings of "Extremely Competent" in 2016 and 2017, and a 4.5 "Highly Competent/Extremely Competent" rating in 2015. He has 103 medals for Excellent Police Duty, 25 medals for Meritorious Police Duty, five Commendations, one Honorable Mention and one Combat Cross. In his twenty-six years of service, [REDACTED]

In 2012, Respondent pled Guilty to misconduct that occurred in 2008 in two separate disciplinary cases and negotiated a penalty of thirty (30) vacation days. In the first case, Respondent pled Guilty to (i) directing another officer to apply for and execute a search warrant without making proper notifications to a duty captain to set up pre-execution and post-execution tac plans; (ii) failing to notify Internal Affairs after being made aware by an employee of the Bronx District Attorney's Office that an arrestee accused another MOS of taking \$4000 from his apartment and (iii) failing to make the proper notifications to the Administration for Children's Services after observing an infant and a minor child inside an apartment containing narcotics and a loaded firearm. In the second matter, Respondent pled Guilty to (i) failing to make the proper notifications to the Administration for Children's Services after observing an infant inside a vehicle containing crack/cocaine; (ii) [REDACTED]

[REDACTED] (iii) [REDACTED]; (iv) failing to supervise subordinate officers by ensuring that proper paperwork was prepared in connection with a detained individual while that individual was detained in police custody and handcuffed to a chair for several hours and (v) [REDACTED]
[REDACTED]

Respondent also has a monitoring history. He was placed on Level 1 Force Monitoring on May 16, 2005 for having received three or more CCRB complaints in a one-year period. That monitoring remained in effect until February 14, 2006, at which time he was placed on Level 2 Force Monitoring. The Level 2 Monitoring was discontinued on May 12, 2008. On April 12,

2010, Respondent was again placed on Level 2 Force Monitoring, which remained in effect until November 14, 2011, for having 3 or more CCRB complaints in one year. He was once more placed on Level 1 Force Monitoring on February 26, 2015. That monitoring remains in effect.

For your consideration.

A handwritten signature in black ink, appearing to read "Nancy R. Ryan".

Nancy R. Ryan
Assistant Deputy Commissioner Trials